

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56715; File No. SR-CBOE-2007-119)

October 29, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Criteria for Securities that Underlie Options Traded on the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2007, Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change (“Exchange Notice”) as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit the initial and continued listing and trading on the Exchange of options on Index Multiple Exchange Traded Fund Shares (“Index Multiple Units”) and Index Inverse Exchange Traded Fund Shares (“Index Inverse Units”). The text of the proposed rule change is available on the Exchange’s Web site (www.cboe.org/Legal), at the Exchange’s Office of the Secretary and at the Commission.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise Rules 5.3, Criteria for Underlying Securities, and 5.4, Withdrawal of Approval of Underlying Securities, to enable the listing and trading on the Exchange of options on Index Multiple Units and Index Inverse Units. Index Multiple Units seek to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic stock index. Index Inverse Units seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic stock index by a specified multiple. Index Multiple Units and Index Inverse Units differ from traditional exchange-traded fund shares or "Units" in that they do not merely correspond to the performance of a given index, but rather attempt to match a multiple or inverse of such underlying index performance. The ProShares Ultra Funds, which currently trades on the American Stock Exchange ("Amex") is an example of an Index Multiple Unit. Amex also currently lists for trading Index Inverse Units, namely the Short Funds and the UltraShort Funds.³

³ See Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (approving the listing and trading of Ultra Funds and Short Funds) and 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (approving the listing and trading of the UltraShort Funds). The Ultra Funds are expected to gain, on a percentage basis, approximately twice (200%) as much as the underlying benchmark index and should lose approximately twice (200%) as much as the underlying benchmark index

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Index Multiple Units or Index Inverse Units may hold a combination of financial instruments, including, among other things: stock index futures contracts; options on futures; options on securities and indexes; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (the "Financial Instruments"). The underlying portfolios of Index Multiple Units generally will hold at least 85% of their assets in the component securities of the underlying relevant benchmark index. The remainder of any assets is devoted to Financial Instruments that are intended to create the additional needed exposure to such underlying index necessary to pursue its investment objective. Normally, 100% of the value of the underlying portfolios of Index Inverse Units will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the "Money Market Instruments").

Currently, Interpretation and Policy .06 to Rule 5.3 provides securities deemed appropriate for options trading shall include shares or other securities ("Units") that are traded on a national securities exchange or through the facilities of a national securities association and are defined as an NMS stock under Rule 600 of Regulation NMS, and that (i) represent interests in registered investment companies (or series thereof) organized as an open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolio of securities (of that hold securities in one of more other registered investment companies that

when such prices decline. The Short Funds are expected to achieve investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (-100%) or an underlying benchmark index. Lastly, the UltraShort Funds are expected to achieve investment result, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (-200%) of the underlying benchmark index.

themselves hold such portfolios of securities); or (ii) represent interests in a trust or other similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust; or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool Units").

The Exchange proposes to amend Interpretation and Policy .06 to Rule 5.3 to expand the type of options to include the listing and trading of options based on Index Multiple Units and Index Inverse Units that may hold or invest in any combination of securities, Financial Instruments and/or Money Market Instruments. Index Multiple Units and Index Inverse Units will continue to otherwise satisfy the listing standards in Rule 5.4. The Exchange also proposes to make non-substantive, technical changes to Interpretation and Policy .06 to and to delete duplicative rule text from Interpretation and Policy .06(ii) to Rule 5.3. In addition, the Exchange proposes to remove the reference to a "national securities association" in Interpretation and Policy .06 to Rule 5.3.

As set forth in proposed amended Interpretation and Policy .06 to Rule 5.3, Index Multiple Units and Index Inverse Units must be traded on a national securities exchange and must be an "NMS stock" as defined under Rule 600 of Regulation NMS. In addition, Index Multiple Units and Index Inverse Units must meet either: (i) the criteria and guidelines under Interpretation and Policy .01 to Rule 5.3; or (ii) be available for creation or redemption each

business day in cash or in kind from the investment company at a price related to net asset value. In addition, the investment company shall provide that shares may be created even though some or all of the securities and/or cash (in lieu of the Financial Instruments) needed to be deposited have not been received by the investment company, provided the authorized creation participant has undertaken to deliver the shares and/or cash as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the Unit which underlies the option as described in the prospectus.

The Exchange's current continuing listing standards for options on Units will continue to apply.

The Exchange proposes to amend Interpretation and Policy .08 to Rule 5.4 to indicate that the index or portfolio may consist of securities, Financial Instruments and/or Money Market Instruments. The Exchange also seeks to delete reference to "national securities association" set forth in Interpretation and Policy .08(b) to Rule 5.4.

Under the applicable continued listing criteria in Interpretation and Policy .08 to Rule 5.4, options on Units may be subject to the suspension of opening transactions as follows: (1) following the initial twelve-month period beginning upon the commencement of trading of the Units, there are fewer than 50 record and/or beneficial holders of the Units for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments and Money Market Instruments on which Units are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, the Units shall

not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Index Multiple Units or Index Inverse Units, if the Units cease to be an "NMS stock" as provided for in paragraph (f) of Interpretation and Policy .01 of Rule 5.4 or the Units are halted from trading on their primary market.

The expansion of the types of investments that may be held by Index Multiple Units or Index Inverse Units under Interpretation and Policy .06 to Rule 5.3 will not have any effect on the rules pertaining to position and exercise limits⁴ or margin.⁵

This proposal is necessary to enable the Exchange to list and trade options on the shares of the Ultra Fund, Short Fund and UltraShort Fund of the ProShares Trust.⁶ The Exchange believes the ability to trade options on Index Multiple Units and Index Inverse Units will provide investors with greater risk management tools. The proposed amendment to the Exchange's listing criteria for options on Units is necessary to ensure that the Exchange will be able to list options on the Units of the ProShares Trust as well as other Index Multiple Units or Index Inverse Units that may be introduced in the future.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in Index Multiple Unit options and Index Inverse Unit options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to national securities exchanges and, in particular, the

⁴ See Rules 4.11, Position Limits, and 4.12, Exercise Limits.

⁵ See Rule 12.3, Margin Requirements.

⁶ See supra at Note 3.

requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2007-119 on the subject line.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-119. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2007-119 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

a national securities exchange,⁹ and in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Surveillance

The Commission notes that the Exchange has represented that its existing surveillance procedures applicable to trading options are adequate to properly monitor trading in Index Multiple Units options and Index Inverse Units options. In addition, the Exchange represented that the expansion of the types of investments that may be held by Index Multiple Units or Index Inverse Units under Interpretation and Policy .06 to Rule 5.3 will not have any effect on the rules pertaining to position and exercise limits¹² or margin.¹³

Listing and Trading Options on Fund Shares

The Commission notes that, pursuant to the proposed rule change, the Exchange represented that the current continuing listing standards for options on Units will continue to apply. These provisions include requirements regarding initial and continued listing standards, suspension of opening transactions, and trading halts. Proposed amended Interpretation and

⁹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See Rules 4.11, Position Limits, and 4.12, Exercise Limits.

¹³ See Rule 12.3, Margin Requirements.

Policy .06 to Rule 5.3, would require that Index Multiple Units and Index Inverse Units must be traded on a national securities exchange and must be an "NMS stock" as defined under Rule 600 of Regulation NMS.¹⁴

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on the shares of the Ultra Fund, Short Fund and UltraShort Fund of the ProShares Trust.¹⁵ The Commission believes that the ability to trade options on the Index Multiple Units and Index Inverse Units will provide investors with additional risk management tools. The Commission further believes that the proposed amendment to the Exchange's listing criteria for options on Exchange Traded Fund Shares will ensure that the Exchange will be able to list options on the Funds of the ProShares Trust as well as other Index Multiple Units and Index Inverse Units that may be introduced in the future, thereby affording investors greater investment choices.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the Federal Register. The Commission notes that it recently has approved a substantially similar proposal.¹⁶ This proposed rule filing does not raise any new, unique or substantive issues from those raised in the prior filing that would preclude the trading of the options on Index Multiple Units or Index Inverse Units on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for these types of options.

¹⁴ 17 CFR 242.600(b)(47).

¹⁵ See supra at Note 3.

¹⁶ See Securities Exchange Act Release No. 56650 (October 12, 2007), 72 FR 59123 (October 18, 2007) (approving SR-Amex-2007-35). See also SR-ISE-2007-87 (pending rule filing proposing similar amendment to options listing criteria).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-CBOE-2007-119) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).